

ground for granting leave" to appeal out of time. In that case the applicants filed their notice of appeal within time but failed to serve a copy of it on the respondent in time. The matter is governed by rule 13 of the Federal Court (Civil Appeals) (Transitional) Rules which requires special leave of the Federal Court. In the present case the matter is governed by item 8 of the First Schedule to the Courts of Judicature Act, 1964, which gives the High Court a discretion to enlarge or abridge the time.

Taking into consideration the relevant authorities applicable, I am of the view that the correct principle which applies to an application of this nature is as laid down by the Privy Council in *Ratnam v. Cumarasamy & Anor.*⁽⁵⁾ Although it was concerned with Order 58 rule 22 of the Rules of the Supreme Court, it was dealing with an appeal from the order of the Court of Appeal dismissing an application for an order that the time for filing the record of appeal be extended. At page 229, thereof, Lord Guest says as follows:—

"The rules of court must *prima facie* be obeyed, and in order to justify a court in extending the time during which such step in procedure requires to be taken, there must be some material upon which the court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time table for the conduct of litigation...."

The main ground for the application as I have stated earlier is ignorance of the procedural law. The only material before me is the affidavit filed by the applicant who, apart from stating the ground mentioned above, believed that he has good grounds of appeal and that his appeal would probably be allowed by this court. In the first place, I do not consider ignorance of the procedural law to constitute sufficient material upon which I can exercise my discretion in his favour on the principle laid down in *Ratnam's* case. Secondly, it is not enough by merely showing that the proposed appeal has merits without also showing there are special grounds for the court to exercise its discretion. (See *Ramanath & Ors. v. Ban Tsan Chuan*⁽⁶⁾).

It is urged that the principle "rules of procedure should be the handmaiden not the master" as stated by Ismail Khan J. (as he then was) in *Ee Kim Kin v. Collector of Land Revenue, Alor Gajah*,⁽⁷⁾ should be the guiding line in a case of this nature. That was an application for an application for an order of *mandamus*. A preliminary objection was raised at the commencement of the proceedings relating to the procedure to be followed with regard to Order 53 of the Rules of the Supreme Court and Order 59 of the English Rules. The issue is therefore different from the present case where the rules to be applied are clear and mandatory.

For the reasons stated above, particularly the principle adopted by the Privy Council in *Ratnam's* case, I do not think that a mistake of the law on the ground of ignorance of procedure is sufficient ground for granting leave to serve notice of appeal out of time.

I therefore dismiss the application with costs.

Application dismissed.

Solicitors: Karpal Singh, Wong & Co.; Jayadeva & Zahir.

A M. Y. v. COMPTROLLER-GENERAL OF INLAND REVENUE

[F.C. (Suffian, Gill and Ong Hock Sim F.JJ.) July 6, 1972]

[Kuala Lumpur — Federal Court Civil Appeal No. 121 of 1971]

Income Tax — Appeal — Determination of assessable income — Whether taxpayer was resident in Malaya — Whether temporary absences were reasonable and consistent with claim — Income Tax Ordinance, 1947, s. 2.

Income Tax — Review — Whether Court can review decision of Special Commissioners where conclusion improperly drawn.

This was an appeal from the decision of the High Court [1972] 1 M.L.J. 84.

The question for determination was whether the appellant was "resident" in the States of Malaya in the years 1966 and 1967 within the meaning of section 2 of the Income Tax Ordinance, 1947. He was in Malaya for 132 days in 1966 and 141 days in 1967, but was held not to have been a "resident". On appeal to the Federal Court,

Held, allowing the appeal: (1) the appellant was "resident" in Malaya in the years 1966 and 1967. His temporary absences were reasonable and not inconsistent with his claim to be resident in Malaya;

(2) on the whole of the evidence before them, the conclusion arrived at by the special commissioners could not be properly drawn. Thus, in those circumstances, it was open to the Federal Court, as well as the court below, to review the decision of the special commissioners;

(3) therefore, the deciding order of the special commissioners must be set aside and an order made that the respondent do amend the assessment of income tax of the appellant on the basis of his being resident in Malaya in those two years.

Cases referred to:—

- (1) *Levene v. The Commissioners of Inland Revenue* 13 T.C. 486, 505; [1928] A.C. 217, H.L.
- (2) *Lysaght v. The Commissioners of Inland Revenue* 13 T.C. 511; [1928] A.C. 234 H.L.
- (3) *Commissioners of Inland Revenue v. Zorab* 11 T.C. 289, 291.
- (4) *Cooper v. Cadwalader* 5 T.C. 101.
- (5) *Loewenstein v. De Salis* 10 T.C. 424.
- (6) *Kinloch v. The Commissioners of Inland Revenue* 14 T.C. 736.
- (7) *Fox v. Stirk* [1970] 3 All E.R. 7, 11.
- (8) *Robertson v. Federal Commissioner of Taxation* 57 C.L.R. 147, 164.
- (9) *Gregory v. Deputy Federal Commissioner of Taxation* 57 C.L.R. 774, 778.
- (10) *De Beers Consolidated Mines, Ltd. v. Howe* [1906] A.C. 455, 458.
- (11) *Egyptian Delta Land and Investment Co. Ltd. v. Todd* [1929] A.C. 1.
- (12) *Burrows v. Lang* [1901] 2 Ch. 502, 508.

H FEDERAL COURT.

P. Mooney for the appellant.

Nik Saghir bin Mohamed Noor (Senior Federal Counsel) for the respondent.

Gill F.J.: The question for determination in this appeal is whether for purposes of income tax the appellant, M.Y., was "resident" in the States of Malaya in the years 1966 and 1967 within the meaning of that word in section 2 of the Income Tax Ordinance, 1947.

The Comptroller-General of Inland Revenue, who is the respondent to this appeal, answered the question in the negative when he assessed the appellant to

income tax as a non-resident for the years in question. In confirming that assessment on an appeal to them, the Special Commissioners of Income Tax answered the question in the same way. On a case stated by the special commissioners for the opinion of the High Court the same answer was given by Abdul Hamid J. from whose decision this appeal has been brought.

The facts of the case as found by the special commissioners are that the appellant's father, M.O., was one of the founder members of the partnership firm of M.S. & Co. which was established in 1900 to carry on business in Singapore, Kuala Lumpur, Penang and Ipoh. On his father's death in 1950 the appellant's mother, O.P., took over his father's share in and became a partner of the firm. In 1954 the businesses in Singapore, Kuala Lumpur, Penang and Ipoh became separate partnerships, and the Kuala Lumpur partnership was incorporated into a limited company called M.S. & Co. Ltd. with the appellant's mother as one of the shareholders.

The appellant was born in India on June 20, 1937. He first came to Malaya on September 19, 1952, his mother having sent him here to go to school in the morning and to study in the afternoon the business of the shop, of which she had become a partner. He became a full-time assistant in the company in 1956 and a shareholder on May 9, 1958. Since April 17, 1959 he has held 67,281 shares in the company which represent approximately one-sixth of the issued shares. He has been a director of the company since April 27, 1959 and, except when he is away in India, he manages the company and works full time for it. When he is in this country he is paid the manager's remuneration and supplied with food and accommodation by the company, and at all times a place of stay is reserved for him on the premises.

The appellant is a citizen of India. He married in India in 1957 and his wife and three children, all of whom were born in India, have lived in India except for a period of six months in 1968 when they came to this country on a visit. His mother, who died in November, 1967, also lived in India all her life. The appellant has 15 acres of land and four houses in India. His wife and children live in one of the houses and the other three have been rented out. He has no property in Malaya other than his shares in M.S. & Co. Ltd. But, as I have already stated, there is a place reserved for him in the shop premises of the company at all times.

Ever since the appellant first came to Malaya from India in 1952 he has spent his time partly here and partly in India. During the years 1952 to 1970 he resided in Malaya for 104, 365, 207, 365, 128, 183, 275, 365, 83, 308, 89, 261, 32, 192, 132, 141, 287, 131 and 211 days respectively. It is to be observed that he was in Malaya for 132 days in 1966 and 141 days in 1967, but he has been held not to have been "resident" in Malaya for those two years by reason of the definition of the word "resident" in section 2 of the Income Tax Ordinance, 1947, which reads as follows: -

"'resident' in any place, when applied to an individual, means an individual who resides in that place except for such temporary absences therefrom as may be reasonable and not

A inconsistent with a claim by such individual to be resident in that place;"

In applying this definition to the facts of the case, the special commissioners stated it to be their opinion that the definition was restrictive in the sense that an individual could not be taken as resident in any place if he was absent from that place and such absence was not temporary, or if such absence was not reasonable and was inconsistent with his claim to be resident in that place. In the event they reached the conclusion that the appellant was not "resident" in Malaya in 1966 and 1967.

The special commissioners have also stated in their grounds of decision that one should exercise care in applying to our cases the principles laid down in the cases decided in the United Kingdom as regards the meaning of the word "resident" because of the difference between our law and that of the United Kingdom. Whilst I agree that the question to be decided in this appeal must necessarily be decided in the light of the definition of the word "resident" in our Ordinance, it is necessary first to consider the ordinary meaning of that word before considering the exception as regards temporary absences which are reasonable and not inconsistent with the claim by an individual to be resident in any particular place. To that extent the cases decided in the United Kingdom are relevant and, though not binding, of great persuasive value.

As to what the word "resident" means, Viscount Cave L.C. said in *Levene v. The Commissioners of Inland Revenue*:⁽¹⁾

"...the word 'reside' is a familiar English word and is defined in the *Oxford English Dictionary* as meaning 'to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place'. No doubt this definition must for present purposes be taken subject to any modification which may result from the terms of the Income Tax Act and Schedules; but, subject to that observation, it may be accepted as an accurate indication of the meaning of the word 'reside'. In most cases there is no difficulty in determining where a man has his settled or usual abode, and if that is ascertained he is not the less resident there because from time to time he leaves it for the purpose of business or pleasure. ... But a man may reside in more than one place. Just as a man may have two homes — one in London and the other in the country — so he may have a home abroad and a home in the United Kingdom, and in that case he is held to reside in both places and to be chargeable with tax in this country."

That was a case in which the appellant, a British subject, having surrendered the lease of his house in London in March, 1918, lived in hotels in the United Kingdom and abroad. From December, 1919 until January, 1925 he spent between four and five months each year in the United Kingdom to obtain medical advice for himself and his wife, to visit relatives and the graves of his parents, to take part in certain Jewish religious observances and to deal with his income tax affairs. In January, 1925 he leased a flat abroad and expected to continue to make visits to the United Kingdom though not to such an extent as in the past. He was held to be a resident in the United Kingdom.

In the same case, when it came up before the High Court on a case stated, Rowlatt J. said, at pages 491 and 492:

"The words 'resident' and 'residence' are in the first place quite clearly intended to describe, as I think I have said before, the attribute of the person. ... but there is no doubt that the words 'resident' and 'residing' are capable of an ambiguity. When you speak of a person residing, do you mean that he has attributed to himself a quality which makes him describable in that way with reference to a place, or do you mean that he really is there? For legal purposes, *prima facie* one thinks of 'residence' as describing the quality of a person, so that a person may be a resident in England and Scotland too, at the same time, in point of law, though at the moment of which you are speaking he may be actually living in Paris or anywhere else."

In *Lysaght v. The Commissioners of Inland Revenue*,⁽²⁾ the appellant, a company director, partially retired in 1919 but retained the post of advisory director of the company. He sold his house in London and went to live permanently in Ireland. He came to England every month to attend directors' meetings and stayed either at hotels or at his brother's house. The total number of days spent by him in England for the three years ended 5th April, 1923, 5th April, 1924 and 5th April, 1925 were 101, 94 and 84 respectively, while he spent 48 days there in the period 6th April, 1925 to 25th September, 1925. It was held that he was resident in the United Kingdom. Lawrence L.J. said in the Court of Appeal, at page 525:

"The case is near the line but in my opinion the determining factor is that the post which the appellant holds in John Lysaght, Limited, causes him to come regularly to England and to stay in the United Kingdom for a substantial period in each year. The fact that the appellant stays regularly in England for about 3 months of the year for the discharge of his duties as the servant of an English company in my opinion constitutes him a person who is both resident and ordinarily resident in the United Kingdom."

In the House of Lords, Viscount Sumner said, at page 528:

"Grammatically the word 'resident' indicates a quality of the person charged and is not descriptive of his property, real or personal."

Lord Buckmaster said at page 535:

"A man might well be compelled to reside here completely against his will; the exigencies of business often forbid the choice of residence and though a man may make his home elsewhere and stay in this country only because business compels him, yet none the less, if the periods for which and the conditions under which he stays are such that they may be regarded as constituting residence, it is open to the Commissioners to find that in fact he does so reside, ..."

In the *Commissioners of Inland Revenue v. Zorab*⁽³⁾ Rowlatt J. said:

"Of course it is perfectly right to say that a man has not got to have a residence in the shape of a building to be resident in this country. That is quite clear. But I think that one has to consider not only the time that he is in this country but the nature of his visit and his connection with the country. I think the cases quite bear that out. Because the question to be solved is not whether he is resident for the five months he is here, but whether he is resident for the whole year during the time he is not here. So I think we must consider the nature of his connection with this country in every case. That was at the root of *Cadwalader's*⁽⁴⁾ case, because there the gentleman had an establishment in Scotland going on all the year. The spot that he visited for a few months of the year was the spot all the time. If one may use that expression."

Where there is a place of abode kept available for the use of a visitor to the United Kingdom, he is resident in any year in which he visits it in the United Kingdom irrespective of the length of visit, though this is subject to qualification in the case of persons work-

A ing full time where all the duties are performed abroad (see *Halsbury*, 3rd edition, volume 20, page 395).

In *Loewenstein v. De Salis*⁽⁵⁾ the appellant, a Belgian subject who had a residence in Brussels, visited the United Kingdom each year, and occupied a hunting box belonging to a company of which he was a director and in which he held over ninety *per cent.* of the shares. In no year was he in the United Kingdom for a total period of six months or more. He could, without obtaining formal permission, use the hunting box at any time when in the United Kingdom. On a stay of any length he was accompanied by his private secretaries and household servants, and certain of his servants, indoor and outdoor, were on the premises throughout the year. The company paid their wages and was reimbursed by the appellant. It was held that, since the hunting box was *de facto* available for the appellant's occupation whenever he came to this country, notwithstanding that he was neither the owner nor the lessee of the property, he was chargeable to income tax as a person residing in the United Kingdom.

A person who is in the United Kingdom for some temporary purpose only, and not with any view or intent of establishing his residence therein, which expression does not imply that he must have a proprietary interest in some dwelling house, cannot be said to be resident in the United Kingdom. But where a person visits the United Kingdom year after year for substantial periods of time so that the visits are or become part of his habit of life, although there is no place of abode for him in the United Kingdom and he stays in hotels during such visits, he is resident in the United Kingdom (see *Kinloch v. The Commissioners of Inland Revenue*⁽⁶⁾).

F As Lord Denning M.R. said in *Fox v. Stirk*,⁽⁷⁾ there are three principles to be derived as regards the word "reside". The first principle is that a man can have two residences. The second principle is that temporary presence at an address does not make a man resident there. The third principle is that temporary absence does not deprive a person of his residence.

G In *Robertson v. Federal Commissioner of Taxation*⁽⁸⁾ Dixon J. said:—

"On the whole, the commissioners seem now inclined to look at the course of the appellant's movements over a series of years. For the assistance of visitors to the United Kingdom in ascertaining their position in relation to the question of residence, the Board of Inland Revenue have prepared a statement which is as follows:— '... The question of residence in any particular case can only be determined by reference to the facts of the case. But it can be said that the Board of Inland Revenue would normally regard an average annual period or periods amounting to three months as "substantial" and the visits as having become "habitual" after four years. And, where the visitor's arrangements indicated from the start that regular visits for substantial periods were to be made, he would be regarded as resident in and from the first year.'"

H Applying to the facts of the present case the principles enunciated in the cases which I have cited, and forgetting for the moment the question of such temporary absence as may be reasonable and not inconsistent with a claim to residence, to which I shall

come in a moment, it would seem clear that the appellant was "resident" in Malaya in the years 1966 and 1967. It is to be observed that the appellant's connection with Malaya dates back to 1952 when he was sent here by his mother to study the business of the partnership of which his father was one of the founder members. The nature of his connection with this country is his very substantial business interests in M. S. & Co. Ltd., which he has inherited from his father and mother, so that his visits to this country cannot be said to be for some temporary purpose only. From the time he first set foot in Malaya up to November 20, 1970, a total of 6,940 days, he has lived in Malaya for 3,859 days. This works out at an average of more than six months in the year. Except for the years 1960, 1962 and 1964, there has been no year in which he has spent less than four months in this country, and he was here throughout the years 1953, 1955 and 1959. Like the appellant in *Lysaght's case*,⁽²⁾ the position which he holds in M. S. & Co., Ltd. causes him to come to and stay in Malaya for a substantial period in each year. The fact that a place for his stay is reserved for him at all times on the company's premises puts him in a position similar to that of the appellant in *Loewenstein v. De Salis*.⁽⁵⁾ Indeed, his visits to this country year after year for substantial periods of time are part of his habit of life. Of course, he also resides in India for substantial periods, which merely means that he has two residences. In my judgment the special commissioners were wrong in holding against the appellant his admission that if M. S. & Co., Ltd. does not exist he will not be here. This in fact supports his claim. The fact that he has made Malaya the place of his business activity is the strongest ground for saying that he has acquired the concurrent character of a resident of Malaya (see *Gregory v. Deputy Federal Commissioner of Taxation* (Western Australia)⁽⁹⁾).

The special commissioners considered the following passage from the judgment of Viscount Sumner in *Levene v. The Commissioners of Inland Revenue*⁽¹⁾ at page 501:

"It is suggested that the Commissioners misdirected themselves in point of law, because they took into account, with regard to the earlier years, conduct which only occurred subsequently. I agree that the taxpayer's chargeability in each year of charge constitutes a separate issue, even though several years are included in one appeal, but I do not think any error of law is committed if the facts applicable to the whole of the time are found in one continuous story. Light may be thrown on the purpose with which the first departure from the United Kingdom took place, by looking at his proceedings in a series of subsequent years. They go to show method and system and so remove doubt which might be entertained if the years were examined in isolation from one another."

They have stated in their grounds of decision that that passage is an answer to a suggestion which might be made that in deciding this case they ought not to take into account the conduct of the appellant and the events that occurred subsequent to the years under appeal. Nonetheless, they would appear to have taken the year 1966 and 1967 in isolation in deciding that the appellant was non-resident in Malaya during those years. His departures to India during those two years were no indications that he had no intention of returning to

A Malaya. His going back to India during those years was nothing more than a part of his pattern of life.

The special commissioners would appear also to have been influenced by the fact that the appellant was assessed to income tax as a non-resident for the years of assessment 1952, 1953, 1954, 1962 and 1964, to which he raised no objection. This, in my opinion, is irrelevant to the question of his being resident or non-resident in the years in question. In any event, his having been assessed as a non-resident for those earlier years cannot operate as an estoppel against the appellant.

One of the reasons stated by the commissioners for their conclusion is that the appellant is a citizen of India, having first set foot on our soil in September, 1952. It is clear that nationality does not affect residence as such. As Lord Loreburn L.C. said in *De Beers Consolidated Mines, Limited v. Howe*,⁽¹⁰⁾ an individual may be of foreign nationality, and yet reside in the United Kingdom (see also *Egyptian Delta Land and Investment Company Ltd. v. Todd*⁽¹¹⁾).

Another reason given by the special commissioners for their decision is that the appellant had no intention of establishing his residence here when his wife and children are resident in India. Here they would appear to have confused residence with domicile. While no person can at any time have more than one domicile, there is no limit to the number of places of residence which any individual may possess, and, theoretically at least, there is nothing to prevent anyone becoming simultaneously a resident in every state and colony on the face of the globe. As was stated in *Cooper v. Cadwalader*,⁽⁴⁾ —

"domicile has no bearing on the question, and where a person has in fact a residence in the United Kingdom he is chargeable as a person residing there, although he may also have a residence, or residences, out of the United Kingdom."

As I have already said, the fact that the appellant comes back to Malaya from time to time purely for the business of M. S. & Co., Ltd., does not prevent him from being resident in this country. Indeed, his pattern of life clearly indicates that he is simultaneously a resident of India and of Malaya.

Since the imposition by our immigration authorities in 1956 of some sort of control of non-citizens staying in this country, the appellant travels to and from India on a re-entry permit which is valid only for a year. The special commissioners have said that the appellant would have remained longer in India but for this restriction and that he comes back to Malaya merely to keep alive his re-entry permit. This was pure conjecture on their part as no such inference could properly be drawn from the facts.

I have now to consider the absences of the appellant from Malaya in the years 1966 and 1967. The question is whether those absences were reasonable and not inconsistent with his claim to be resident in Malaya.

The *Shorter Oxford English Dictionary* defines the word "temporary" to mean "lasting for a limited time; existing or valid for a time (only); transient". In

Burrows v. Lang⁽¹²⁾ Farwell J said:

"The meaning of 'temporary purpose' is, therefore, not confined to a purpose that happens to last in fact for a few years only, but includes a purpose which is temporary in the sense that it may within the reasonable contemplation of the parties come to an end."

The facts in the present case show that over a period of 19 years the appellant went back to India year after year and always kept on returning. The absences therefore were temporary in the sense that they always came to an end. Bearing in mind that the word "transient" means "not permanent", it would be correct to say that the appellant's absences were temporary in all the circumstances of the case.

For the appellant's temporary absences to be held reasonable it would be sufficient if his presence in India was for a reasonable purpose and it was reasonably necessary for him to be away for the period for which he was absent. The reasons which the appellant gave for his long absences in the two years in question was that his mother wanted him to be by her side when her toe was operated on in 1966 and when her leg was amputated in 1967. There was nothing unreasonable in his having gone there for that purpose. The request for him to go to India had come from a person who was not only his mother but also a person through whom he had acquired his valuable assets in this country.

The special commissioners have said that it was not necessary for the appellant to be absent from this country for so long in those two years. This, in my opinion, was an unfair criticism of the appellant when he had given his reasons for going to India and there was no evidence to the contrary. Length of time is by no means the sole criterion of the reasonableness of the temporary absence. While a short absence generally would be considered temporary, a long absence may not necessarily be not temporary in the special circumstances of the case. In the last analysis, the reason for the absence would be an important factor.

The fact that the appellant did not bother to go to India soon after his mother's death would appear to have led the special commissioners into thinking that his visits to India in 1966 and 1967 were perhaps not for the purpose which he stated. This again was pure conjecture on their part and not a reasonable inference from the facts of the case. As I have already said, there was no evidence before the special commissioners to support their belief that the appellant did not intend to be away temporarily. Indeed, there is evidence against that assertion.

It is clear that the appellant has maintained substantial connection with this country since he first came here. The exigencies of business have brought him back after each visit to India, and, as I have already said, there is no evidence to suggest that his absences were unreasonable. The appellant has not resigned as a director of M.S. & Co. Ltd. He never gave notice to the company as a director that he was not coming back, and he always kept on returning. It is a bit difficult to define "not inconsistent with his claim to be resident", but there can be an inconsistency to such a claim only if there is no element of continuity.

A In all the circumstances of the present case, I do not see how it can be said that there was no element of continuity as regards the appellant's residence in Malaya, bearing in mind that his residence in India for about the same period does not necessarily exclude his residence here. I would therefore hold that the appellant's temporary absences were reasonable and not inconsistent with his claim to be resident in Malaya.

B In dealing with the case stated, the learned judge in the court below, from whose decision this appeal has been brought, took the view that as the special commissioners who had all the relevant material facts before them reviewed the facts as a whole before arriving at their conclusion, it was not open to him to review such conclusion, and he accordingly dismissed the appeal. I regret to say, with respect, that I find myself unable to agree with him. As I have already pointed out, the special commissioners misdirected themselves as to the meaning of the word "resident". They thought that residence means permanent home, thus confusing residence with domicile. They regarded the appellant's residence in India as exclusive of residence in Malaya. There is nothing in their grounds of decision to indicate that they were aware that a man can have two residences. They never directed their minds to the question as to whether Malaya was a second residence of the appellant, his residence in India being inconclusive as to this question. They also misdirected themselves as to the meaning of "temporary" in that they appear to have thought that it meant short. On the whole, their conclusion could not properly be drawn from the evidence before them. In those circumstances, it was open to the learned judge, as it is open to this court, to review the decision of the special commissioners (see *Lysaght v. The Commissioners of Inland Revenue*, per Viscount Sumner,⁽²⁾ at page 527).

F For the reasons I have stated, I would hold that the appellant was "resident" in Malaya in the years 1966 and 1967. I would therefore allow this appeal and set aside the deciding order of the special commissioners. There will be an order that the respondent do amend the assessment of income tax in respect of the appellant accordingly in that the assessment be made on the basis of his being resident in Malaya in those years. The respondent must pay the cost of this appeal here and in the court below.

Suffian and Ong Hock Sim FJJ. concurred.

Appeal allowed.

Solicitors: *Skrine & Co.*

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